

Procedures for Temporary Labor Certifications in the Entertainment Industry

I. Background. The Department has been addressing the issue of nonimmigrant aliens coming to the United States for temporary employment in the entertainment industry while high levels of unemployment among U.S. workers in the industry still persist.

The following procedures completely centralize temporary labor certification authority in the entertainment industry in three regions; clarify processing requirements; and ensure uniformity among the responsible regions.

II. Operating Guidelines

A. Decisions on applications by employers seeking temporary admission of nonimmigrant aliens for temporary employment in entertainment occupations require special considerations, such as:

1. An assessment of requirements of the role or the act to be performed.

2. The need to keep the unity of a group or company and support personnel.

3. The role of labor unions in this highly unionized field and their impact on employment opportunities.

4. The willingness of available U.S. workers to fulfill the employer's prescribed itinerary.

B. Based on factors, such as the need to develop expertise, the concentration of activities for requests for aliens in entertainment, and the proximity to sources that know about the availability of U.S. performers in various entertainment fields, regional certifying officers in New York City, Dallas, and San Francisco are designated as the appropriate officials for issuing determinations on applications for temporary employment of aliens in the entertainment industry.

C. Offices of the State job services in New York City, Austin and Los Angeles are designated as Offices Specializing in Entertainment (OSEs). These offices shall receive temporary applications in the entertainment industry directly from employers within their jurisdiction for processing. Permanent applications in the entertainment industry, however, are processed by each State agency and the 10 regional offices.

The jurisdictional breakdown is as follows (Also see attached map)

<u>Region</u>	<u>OSE</u>	<u>States Served By</u>
New York	New York City Alien Employment Certification Office	Region I Region II Region III Region IV
Dallas	Texas Employment Commission Austin Alien Labor Certification Unit	Region V Region VI Region VII
San Francisco	Los Angeles Alien Certification Office	Region VIII Region IX Region X

D. Canadian musicians who enter the U.S. to perform within a 50-mile area adjacent to the Canadian border for a period of 30 days or less are precertified and not subject to these procedures.

E. Public Law 97-271 limits temporary employment of entertainers in the Virgin Islands to periods not to exceed 45 days. Therefore, the period of labor certification for such applications may not exceed 45 days.

F. Occupations in the entertainment industry shall include performers and all technical and support personnel involved with a performance.

G. When a job offer contains requirements or conditions which preclude effective recruitment of U.S. workers, i.e., there is no employer in the U.S., the OSE shall disregard recruitment procedures below and shall immediately send the application to the certifying officer for determination.

III. Procedures.

A. Temporary Labor Certification Applications for Aliens in the entertainment industry shall be filed by employers with the OSE serving the area of intended employment (see map of OSE jurisdiction).
Note: When the job opportunity requires the work to be performed in more than one OSE jurisdiction, the application should be filed with the OSE having jurisdiction over the area where the employment will begin.

B. To allow for enough recruitment of U.S. workers and to give OSEs and regional offices enough processing time, employers should be advised to file their applications at least 45 calendar days before the labor certification is needed. The Department of Labor cannot assure a timely determination if the employer provides less time.

C. When filed, the temporary application should include:

1. A completed ETA-750, Part A, the offer of employment portion of the application for Alien Employment Certification form signed by the employer.

2. An itinerary of locations and duration of work in each location when there is more than one worksite.

3. Documentation of the employer's efforts, if any, to recruit U.S. workers, and the results.

D. The OSE shall review the application for completeness and determine the prevailing wage, guided by standards in regulations at 20 CFR Part 656.40. The wage survey should be done by telephone contact with unions, associations, or any other appropriate sources and the prevailing wage should be computed on a daily or weekly basis.

E. The employer must specify a wage which meets or exceeds the daily or weekly rate and covers each day of the work week that the alien is in the United States for the duration of the employment regardless of hours worked.

F. The employer shall advertise the job opportunity before or after filing the application in a national publication that is likely to bring responses from U.S. workers. The advertisement shall:

1. Identify the employer's name, address, and the location of the employment, if other than the employer's location;

2. Describe the job opportunity in detail,

3. State the rate of pay, which shall not be below the prevailing wage for the occupation;

4. Offer prevailing working conditions,

5. State the employer's minimum job requirements;

6. Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien.

G. The OSE shall write to the appropriate national union(s) (listing enclosed) for availability information and confirmation of the prevailing wage. The following procedures and conditions shall apply to union contacts:

1. The letter to the union shall not identify the employer, but shall describe the type of establishment, the job duties, location and dates of employment, hours of work, wages, and working conditions.

2. From the date the letter to the union is mailed, 10 working days should be allowed to receive a written response. If no response is received after 10 working days, the union should be contacted by telephone to verify if the request was received. If there is availability, 5 additional work days should be allowed for a written response before making a determination based on available information in the application file.

3. Acceptable availability information from unions shall include names, addresses, and telephone numbers of U.S. workers who meet the employer's requirements for the job opportunity.

4. If the union(s) provide names of qualified U.S. workers, the OSE shall refer the list to the employer for direct contact with the applicants.

5. The name of the union, the union representative contacted, and the date of contact must be included on the transmittal form to the regional office for each application.

H. The employer may be required to recruit through other sources which are appropriate for the occupation and customary in the industry, such as talent agencies, agents, and casting directors.

I. A recruitment or information source which asserts the availability of qualified U.S. workers must provide specific information on the U.S. workers, including their names, addresses, and telephone numbers so that the employer may contact them.

J. If the certifying officer finds that the employer has adequately recruited U.S. workers in the previous six weeks before filing the application, the prescribed recruitment through the OSE may be waived. The employer may make a written request for a waiver of recruitment through the OSE. The OSE will send the request along with the application to the certifying officer for evaluation.

K. The employer must provide the OSE a copy of the advertisement showing the name of the publication and the dates published and written results of all recruitment which must:

1. Identify each recruitment source by name;
2. State the name, address, and telephone number of each U.S. worker who applied for the job; and
3. Explain the lawful job-related reasons for not hiring each U.S. worker.

L. When recruitment through all sources is completed, the OSE shall send the application, together with all pertinent information, to the appropriate regional certifying officer in New York, Dallas, or San Francisco.

IV. Determinations.

A. The certifying officer shall consider circumstances unique to the entertainment industry and determine whether to grant or to deny the temporary labor certification, or to issue a notice that the required determination cannot be made based on whether or not:

1. U.S. workers are available for the temporary employment opportunity:

a. The certifying officer, in judging if a U.S. worker is available for the temporary employment opportunity, shall determine from documented results of the employer and local office recruitment efforts if there are other appropriate sources of workers, where the employer should have recruited or may recruit U.S. workers. If further recruitment is required, the application should be returned to the OSE with specific instructions for the additional recruitment.

b. To determine if a U.S. worker is available, the certifying officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expense, or at the employer's expense if the prevailing practice among employers who employ workers in the occupation is to pay such relocation expenses.

c. To determine if U.S. workers are available for job opportunities that will be performed in more than one location, workers must be available in each location on dates specified by the employer.

2. The employment of the alien will adversely affect wages and working conditions of U.S. workers similarly employed. To determine this, the certifying officer shall consider such things as labor market information, special circumstances of the industry, organization, and/or occupation, the prevailing wage rate for the occupation in the area of intended employment, and prevailing working conditions, such as hours in the occupation.

3. The job opportunity contains requirements or conditions which preclude consideration of U.S. workers or which otherwise prevent their effective recruitment, e.g., there is no employer in the U.S. Such applications shall be denied on the basis that U.S. workers are generally available for employment in the entertainment industry and it was not shown that the employer made reasonable efforts to obtain U.S. workers for the job. Under these circumstances, the Department must assume that U.S. workers are available.

B. Dates on the temporary labor certification shall be the beginning and ending dates of the actual employment not to exceed 12 months, and the date certification was granted. The beginning date of certified employment may not be earlier than the date certification was granted.

C. A denial of certification or a notice that certification cannot be made shall not be reviewed by the Department of Labor, but may be appealed to the Immigration and Naturalization Service (INS). The petitioner may attach the decision to the nonimmigrant visa petition and present countervailing evidence that qualified persons in the United States are not available and that the employment policies of the Department of Labor were observed. The INS will consider all such evidence in adjudicating the petition.